IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1264 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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CHANDRAKANT TRIBHOVANDAS JOBANPUTRA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR RAJESH M AGRAWAL for Appellant(s) : 1,MR YOGESH R AGRAWAL for Appellant(s) : 1,

MR KT DAVE, Additional Public Prosecutor for
Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. The present appeal is filed by the appellant-accused against the judgment and order of the learned Special Judge, Fast Track Court No.1, Morbi in Special (NDPS) Case No.60 of 2004 on 28.4.2006 convicting the appellant – original accused under Section-20(b) of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as “the Act”) and sentenced him to suffer rigorous imprisonment for a period of 10 years and fine of Rs. 1 Lacs and in default of payment of fine, further to suffer SI of 2 years with a direction to set off the period, the appellant - accused remained in custody

against the substantive sentence inflicted upon him.

2. This appeal was admitted on 23.8.2006. The appellant – original accused has also moved an application for regular bail. The Court has passed an order on 28.3.2006 observing that looking to the facts of the case, appeal was ordered to be notified for hearing alongwith the bail application and records and proceedings were called for from the trial Court. The learned advocate appearing for the appellant has assured the Court that he would prepare the paper-book and would supply the same to the Court as well as to the learned Additional Public Prosecutor. On receipt of the records and proceedings from the trial Court, paper book was prepared by Mr.Rajesh M. Agrawal, learned advocate appearing for the appellant and accordingly appeal was taken up for final hearing.

3. The brief facts as disclosed in the complaint and unfolded during the course of trial are briefly stated as under :-

4. Mr.B.P.Patel, Deputy Superintendent of Police, Morbi, has filed the complaint on 27.9.2004, wherein he stated that when he had gone to Vankaner from Morbi, he received certain information that one Chandrakant Tribhovan Jobanputra of Lunsar was going to pass towards Lunsar from Chotila on a motorcycle possessed by him with bags of Ganja illegally. Consequent to this information, it was required to keep watch near a Ramdevpir temple near Village – Padcha. After making entry in Station Diary, Police Constable – Narsibhai Naranbhai of Vankaner taluka was sent as a special messenger with a sealed cover to the Police Superintendent of Intelligence. Thereafter, he called upon two local panchas of Vankaner City, namely, (1) Deepakbhai Shankarbhai

Chauhan and (2) Ishat Ismail Makwana both residents of Gujarat Housing Board Mill Colony. Panchas were explained the facts. In the meantime, ASI – Bharatsinh Bhupendrasinh had called upon weigher – Shri Pradeepbhai Rameshbhai Senwala, resident of Vankaner with weighing machine. Each panchas and weigher were explained about the facts of the incident. Moreover, upon making search of panchas and police persons, who had to go in the search in government vehicle GJ-3-G-275 and after ascertaining that nothing obnoxious was found, after preparing preliminary panchanama at about 18:00 to 18:15 hours, and after collecting the seal of Vankaner taluka Police Station sealing wax, thread, torch etc, the complainant and Vankaner Taluka Police Inspector - Shri M.D.Jadeja, ASI – Bharatsinh, ASI – Dinkar Rai Himmatlal Raval, Police Constable – Chhatrasinh, unarmed Police Constable – Gambhirsinh of Vankaner Taluka and the above

panchas, the weigher and driver - Police Constable – Ramlakhan Shri Lalji of Government Vehicle GJ-3G-275 etc, started from Vankaner taluka and reached near Ramdevpir temple situated near a road going towards Lunsar and kept a search there. At that time, one motorcycle has come from Vankaner at about 19:15 hours, which was stopped. Upon asking the name of driver in presence of panchas, he stated his name to be Chandrakant Tribhovandas Jobanputra aged about 48 years resident of Lunsar. Two bags were kept at left and right back side of the motorcycle. He was informed that there is Ganja in his custody and his search is required to be carried out. Therefore, upon asking him as to whether he wanted to get the search to be carried out by any other Officer or Magistrate, he negatived and gave consent in writing. Hence, upon making search in presence of panchas, out of two bags, they found 11 packets of black papers wrapped from

a bag on left side. Upon checking it and getting it smelt to panchas, the leaves were appearing to be green coloured Ganja. The weigher – Pradeepbhai, who came with the raiding party has weighed it and it was found to be 11 Kg Ganja. Upon asking for pass-permit, he stated to have no such pass-permit. Therefore, out of the said Ganja 100 gram Ganja, valuing to be Rs.00.00 was seized as a sample and the rest of the Ganja 10.800 grams valuing to be Rs.44,000/- was kept in one fertilizer bag and seized. Also upon opening the bag on right side and looking into it, 5 Kg Ganja described as above was found out. Sample of 100 gram was drawn out of this Ganja valuing to be Rs.00.00 and the rest of the Ganja 4,900 grams valuing to be Rs.20,000/- was seized after keeping it with bag in one fertilizer bag. Moreover, motorcycle valuing Rs.30,000/- was seized and as on making personal search of the said person, one mobile phone of Nokia Company was

found from his pocket of pent, which was valued to be Rs.3,000/- and one Election Commission Card in his name from raxin pocket purse and cash currency of Rs.5,700/- were also seized for investigation. The detailed panchanama in this respect was drawn from 18:00 to 21:00 hours. Thereafter, the said person was arrested lawfully at about 21:00 hours for keeping 16 Kg Ganja valuing to be Rs.64,000/- without any pass-permit in his custody and motorcycle valuing to be Rs.30,000/-, mobile phone valuing to be Rs.3,000/- and cash currency of Rs.5,700/-, thus total Rs.1,02,700/- . Hence the complainant has filed this complaint for taking lawful action against the said person under Section-20(b) of the NDPS Act.

5. Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded. Based on the

F.S.L. Report, since sufficient incriminating evidence was found against the appellant - accused, he was charge-sheeted in the Court of learned Special Judge, Fast Track Court No.3, Rajkot at Morbi, who framed charge against the accused for commission of the offence punishable under Section-20(b) of the NDPS Act.

6. The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned Special Judge, Fast Track Court No.3, Rajkot at Morbi in Special (NDPS) Case No. 60 of 2004.

7. To prove the culpability of the accused, the prosecution has, in all, examined as many as 11 witnesses, the details of which have been given in paragraph 3 of the impugned judgment and order and the same are as under:-

Sr.No.	Particulars	Exh.No.	Page No.
1	P.W No.1 – Bhagvan Prabhudas Patel – Complainant.	5	53 to 67
2	P.W No.2 – Dipak Shankarbhai Chauhan – Panch Witness.	14	93- 97
3	P.W No.3 – Ishak Ismail Makwana – Panch Witness.	16	103- 110
4	P.W No.4 – Pradip Rameshbhai Sejpal.	17	112-116
5	P.W No.5 – Meghrajsinh Dadubha Jadeja – PSI.	18	117-130
6	P.W No.6 – Bhartsinh Bhupendrasinh Jadeja.	19	131-148
7	P.W No.7 – Amubhai Melandbhai Dangar.	20	149-155
8	P.W No.8 – Balvantsinh Bhavubha Zala.	25	165-168
9	P.W No.9 – Narshi Naran Pardhi.	26	169-172
10	P.W. No.10 – Amrabhai Rupabhai Kharadi.	27A	173-176
11	P.W. No.11 – Ravji Mangaji Balat.	27B	177-185

8. Prosecution has also produced several documents and relied upon the contents of the same. The details of these documents are given in paragraph 3 of the impugned judgment and order, and the same are as under :-

Sr.No.	Type of Evidence	Exh.No.
1	Complaint.	6

Sr.No.	Type of Evidence	Exh.No.
2	Report regarding registration of offence.	7
3	Information given to the appellant – accused about his arrest.	8
4	Seizer memo.	10
5	Resolution under Section-50 of the NDPS Act.	11
6	Ravangi Nondh.	12
7	Arrest Panchnama.	15
8	FSL Report.	33

9. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Rajkot at Morbi explained the appellant - accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated.

10. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the

prosecution, the learned Special Judge, Rajkot at Morbi has held that the prosecution has established beyond reasonable doubt that the charge levelled against the accused was proved and, therefore, the appellant - accused was held guilty of the offence punishable under Section-20(b) of the Act. The learned Special Judge, Rajkot at Morbi has, thereafter, heard the accused and his advocate on sentence and looking to the gravity of the offence committed by the appellant - accused and looking to the circumstances, appellant - accused was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo S.I. of two years.

11. Being aggrieved and dissatisfied with the said judgment and order dated 28.04.2006 passed by the learned Special Judge, Rajkot at Morbi in Sessions Case No. 60 of 2004, the present appeal is filed by the appellant -

accused under Section 374 of the Code of Criminal Procedure.

12. Mr. Rajesh M. Agrawal, learned advocate appearing for the appellant – accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Special Judge, Rajkot at Morbi dated 28.4.2006. He has further submitted that the learned Special Judge, Rajkot at Morbi has erred in convicting the appellant though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Special Judge, Rajkot at Morbi has failed to appreciate that the appellant – accused is innocent and has not committed the alleged offence. He has further submitted that the impugned judgment is manifestly erroneous, patently perverse, illegal, arbitrary and in flagrant violation of the principles of

appreciating and evaluating the prosecution evidence in Criminal trial and in flagrant violation of the principles laid down by the Hon'ble Supreme Court as well as of this Court in catena of decisions. He has further submitted that there is flagrant violation of Sections-42, 50, 52, 53A, 55 and 57 of the NDPS Act. He has further submitted that the alleged contraband articles are not proved to be 'Ganja' as defined in Section-20(b) of the NDPS Act. He has further submitted that if sealing procedure is seen then the possibility of tempering with the contents of the sample cannot be ruled out and it cannot be said that the sample was taken from the contraband articles alleged to be seized from the appellant – accused and the same sample was sent for analysis and the report was obtained regarding the same sample. He has further submitted that the prosecution was not serious about the sanctity of sealing procedure. Necessary entries regarding the

deposit of sample with responsible officer are not legally proved by the prosecution. He has further submitted that the forwarding letter alleged to be sent with sample is not prepared on the spot and the seal, which was used for sealing the sample was not affixed on the forwarding letter and the forwarding letter was also not deposited in Malkhana alongwith the samples. There is also no sufficient evidence that the PSO had kept in his custody the muddamal and sample as required under Section-55 of the NDPS Act. There is no sufficient evidence to the effect that the muddamal and samples were kept in safe and proper custody. He has further submitted that the identity of the samples falls short to be established and when it is so, the benefit of the same has to be given to the appellant – accused. He has further submitted that the contents of the panchnama of seizure are not legally proved and hence it cannot be said that the said contraband

articles were seized from the possession of the appellant – accused. He has further submitted that there are material contradictions, ommisions, discrepancies and inconsistencies in the deposition of the prosecution witnesses. He has further submitted that all the independent witnesses have not supported the case of the prosecution and the evidence of the official witnesses, that is to say, Police Personnels is self contradictory. To rely on such evidence would not be safe for the purpose of convicting the appellant – accused. He has, therefore, submitted that taking into consideration the prosecution evidence as a whole, by no stretch of imagination or reasoning, the appellant – accused can be convicted for the offence punishable under Section-20(b) of the NDPS Act.

13. Mr. K. T. Dave, learned Additional Public Prosecutor, on the other hand has supported

the order and judgment of the learned Special Judge, Rajkot at Morbi and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in Sections-42, 50 as well as 52 of the Act were violated. So far as sealing procedure is concerned, Mr. Dave has relied on the decision of the Hon'ble Supreme Court in the case of **Babubhai Odhavji Patel and Others V/s. State of Gujarat, 2005 (8) SCC 725** and submitted that the learned Special Judge, Rajkot at Morbi has discussed this issue at length in the impugned judgment and order and he has come to the right conclusion that there was no violation of the sealing procedure. He has, therefore, submitted that the sealing procedure was properly followed by the raiding party and/or Investigating Agency and the conviction of the appellant –

accused cannot be disturbed on this ground.

14. Mr. Dave has further submitted that the prosecution has clearly established beyond reasonable doubt the charges against the appellant - accused as the appellant - accused was found in conscious possession of a huge quantity of a narcotic substance 'Ganja' weighing about 16 Kg. He has, therefore, submitted that in view of the provisions contained in Section-20(b) of the Act the appellant - accused is required to be penalised. Mr. Dave has further submitted that it is true that the prosecution case is merely based on the testimonies of the members of the raiding party consisting of the Police Officers and there is no independent corroboration to support the prosecution version. However, absence of independent corroboration and independent support would not render the prosecution version to be unacceptable in light of the

settled legal position. Merely because the Panchas have not supported the prosecution version or have testified in a manner as would even contradict the prosecution version, then also, since the prosecution has established by other believable, trustworthy and corroborative evidence, the charges against the appellant - accused, mere non-support by the Panchas would not be fatal to the case of the prosecution. The important witnesses being P.W. 5 – Meghrajsinh Dadubha Jadeja – PSI Ex.18, complainant - Bhagvan Prabhudas Patel Ex.5 and P.W-6 - Bhartsinh Bhupendrasinh Jadeja Ex.19, who were the members of the raiding party and were also present right since the inception of the proceedings have supported and corroborated the prosecution version. The documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the appellant - accused in the commission of offences charged with. Mr.

Dave has further submitted that even if there is any discrepancy or contradiction emanating from the testimonies of prosecution witnesses, the same would not affect the case of the prosecution. From the documentary evidence on record, more particularly, the documents, namely, complaint, Panchnama, FSL Report, Exh. 7, 8, 9 and 11, it is clear that all the statutory provisions contained in the Act have been fully complied with by the members of the raiding party and, therefore, the prosecution having clearly established beyond reasonable doubt the guilt of both the accused, the conviction order passed by the learned Special Judge, Rajkot at Morbi is required to be upheld.

15. We have considered the submissions advanced by Mr. Rajesh M. Agrawal learned advocate appearing for the appellant - accused and Mr. K.T. Dave, learned Additional Public Prosecutor, appearing for the State of

Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Special Judge, Rajkot at Morbi convicting the accused and sentencing him for R.I of 10 years and fine of Rs.1 lac and in default thereof, to undergo further R.I of two years.

16. In order to find out whether the prosecution has established the charge against the appellant - accused beyond reasonable doubt and whether the learned Special Judge, Rajkot at Morbi has recorded a just and correct conclusion holding the appellant - accused guilty, we may first advert to the oral

testimony of the prosecution witnesses.

17. The prosecution has produced at Ex.33, the report from FSL, Gandhinagar. If the procedure of the sealing sample is seen then one thing is crystal clear that there was all possibility of tempering with the contents of the sample. If the FSL Report Ex.33 and Panchnama Ex.15 are seen together, the procedure of packing and sealing the sample is not as per the principles laid down by this Court in many decisions and the procedure of packing and sealing the sample was such that there remained all possibility of terming the contents of the sample or substitution of the substance. It is obligatory on the part of the prosecution to prove that the procedure of packing and sealing the sample was fully proved and if it is not so, it cannot be said that what was alleged to be seized from the appellant –

accused was the same thing and which was sent for analysis to FSL and the FSL examined the same sample and gave report.

18. From the detailed examination and analysis of the prosecution witnesses and the documentary evidence produced on record by the prosecution, it appears to us that various discrepancies, contradictions, omissions and infirmities are found in the oral as well as documentary evidence. Though several contentions were raised before the Trial Court and before this Court and we found some substance therein, we, however, confine ourselves to deal with the strong protest lodged against sealing procedure adopted by the prosecution. Even otherwise, we do not think it just and proper to deal with those other contentions and rest our decision thereon as the appellant – accused's challenge against sealing procedure adopted

by the prosecution coupled with those other contentions, is strong enough to disturb the finding recorded by the Trial Court and renders the accused to be acquitted. The main grievance was that the identity of the muddamal and the samples sent to the F.S.L. is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. There is difference in the affixing of the seals used for sealing samples and so misuse of the seal for tampering the contents of the sample cannot be ruled out.

19. To examine and appreciate this contention, relevant provisions in the Act or Rules made thereunder touching this subject matter are required to be looked into. Section 55 of the Act deals with Police to take charge of

articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction / Orders. Standing Order No. 1/88 dated 15.03.1988, Standing Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic

drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under :-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

20. Despite the aforesaid Standing Orders / Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before the Court. In the case of **Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153**, this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance.

Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

21. In **Criminal Appeal No. 323 of 1996,** in the case of **Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat** decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the Investigating Officer and Panch witnesses, the Court has observed that after

drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and wax seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the

article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If the slip is put inside as was done in that case, the possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tempering. The procedure,therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the accused.

22.This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002 Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO

and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police station. If the police keeps the slip signed by the panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag, possibility of tampering the muddamal cannot be ruled out as the official seal always remains with the concerned police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the

sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

23.All the aforesaid three judgments have been referred to and relied upon by this Court in its later decision in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** and also in the case of **Kamlaprasad Ramjiprasad Gupta And another V/s. State of Gujarat in Criminal Appeal No. 1366 of 1999 with Criminal Appeal No. 34 of 2000 decided on 21.09.2006** held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is

made to tamper with sample, the slips affixed would get torn.

24. If we consider the procedure laid down in the aforesaid Standing Instruction / Order as well as the ratio of above referred five different judgments of this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we have no hesitation in coming to the conclusion that in the present case also, proper procedure has not been followed by the prosecution. Panchnama – Ex.15 indicates that the slip duly signed by the panchas and the Investigating Officer was loosely kept and it was not affixed on the packet. The FSL report Ex.33 also indicates that each sealed parcel marked as Annexure-A and B contained therein slip having names and signature of panchas and date. These facts

are also found from the deposition of the members of the raiding parties. It is very unfortunate that the members of the raiding parties and/or investigating agency have not been correctly following the sealing procedure and leaving certain loopholes which results into the benefit of the accused and their convictions are not sustained. A proper care, therefore, needs to be taken.

25. We have considered the judgment of the Hon'ble Supreme Court in the case of **Babubhai Odhavji Patel and Others V/s. State of Gujarat, (Supra)** on which reliance was placed by Mr. Raval. However, in that case, the Hon'ble Supreme Court has observed that the appellants' contention in that case that the seal on the sample sent to the Forensic Science Laboratory was found tampered with and this creates a serious suspicion about the report furnished by the Laboratory, was

elaborately dealt with by the Sessions Court and the appellant had given up this plea before the High Court. In the present case, the learned counsel appearing for the appellant – accused has effectively and strenuously pressed into service his submissions with regard to the sealing procedure adopted by the raiding party and/or Investigating Agency and since the same was found to be faulty and defective, the possibility of tampering cannot be ruled out. We are, therefore, of the view that the above decision of the Hon'ble Supreme Court would not render any assistance to the case of the prosecution.

26. In peculiar facts of the present case and in light of the decisions referred to herein above and the principles laid down therein, we are of the opinion that the conviction order passed against the appellant - accused

cannot be sustained. The Appeal, therefore, succeeds. The order of the learned Special Judge, Rajkot at Morbi dated 28.4.2006 passed in Special (NDPS) Case No. 60 of 2004 convicting the appellant - accused for offences punishable under Section-20(b) of the Act and sentencing him to rigorous imprisonment of 10 years and fine of Rs. 1 Lacs and in default thereof, simple imprisonment for two years for commission of such offence is hereby quashed and set aside. The appellant – accused is hereby acquitted from the charges levelled against him. The respondent – State of Gujarat and the jail authority is hereby directed to release the appellant – accused from jail forthwith unless his presence is required in connection with any other case. Amount of fine, if paid shall be refunded to him.

[A. M. KAPADIA, J.] [K.A. PUJ, J.]

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